

REMARKS

I. Introduction

Claims 3-9 are currently pending in the present application and stand rejected. Applicant respectfully requests reconsideration in view of the following explanation.

II. Rejection of Claim 3, 4 and 8 under 35 U.S.C. § 103(a)

Claims 3, 4 and 8 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,527,216 ("Senanayake '216"), further in view of De Luca (WO 2004/036039). Applicant respectfully submits that the rejection should be withdrawn for at least the following reasons.

Applicant notes that De Luca reference is not a valid prior art reference against the present application because the earliest effective U.S. filing date of De Luca for § 102(e) purposes is October 15, 2003 (the international filing date), which is later than the effective U.S. filing date of the present application, September 8, 2003. Furthermore, the publication date of De Luca reference is April 29, 2004, which is also later than the effective U.S. filing date of the present application, thereby rendering De Luca ineffective as a prior art reference against the present application for the purposes of § 102(a) and 102(b).

Since De Luca reference is not a valid prior art reference against the present application, and since the Examiner explicitly concedes that Senanayake '216 does not teach or suggest all the limitations of claim 3, the obviousness rejection of claim 3 and its dependent claims 4 and 8 should be withdrawn.

III. Rejection of Claims 5 and 6 under 35 U.S.C. § 103(a)

Claims 5 and 6 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Senanayake '216 in view of De Luca and U.S. Patent No. 3,918,518 ("James"). Claims 5 and 6 depend on claim 3. As note above in connection with claim 3, De Luca reference is not a valid prior art reference against the present application, and the Examiner explicitly concedes that Senanayake '216 does not teach or suggest all the limitations of claim 3. Furthermore, James clearly fails to remedy the deficiencies of Senanayake '216 as applied against parent claim 3. Accordingly, the obviousness rejection of dependent claims 5 and 6 should be

withdrawn.

IV. Rejection of Claims 7 and 9 under 35 U.S.C. § 103(a)

Claims 7 and 9 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Senanayake '216 in view of De Luca and WO 96/04443 ("Senanayake '443"). Claims 7 and 9 depend on claim 3. As note above in connection with claim 3, De Luca reference is not a valid prior art reference against the present application, and the Examiner explicitly concedes that Senanayake '216 does not teach or suggest all the limitations of claim 3. Furthermore, Senanayake '443 clearly fails to remedy the deficiencies of Senanayake '216 as applied against parent claim 3. Accordingly, the obviousness rejection of dependent claims 7 and 9 should be withdrawn.

V. CONCLUSION

In view of all of the above, it is respectfully submitted that all of the presently pending claims 3-9 are in allowable condition. Prompt reconsideration and allowance of the application are respectfully requested.

Respectfully submitted,

KENYON & KENYON LLP

 (R. No. 36,197)

Dated: February 2, 2010

SONG LEE for Gerard Messina
Gerard A. Messina
Reg. No. 35,952
One Broadway
New York, NY 10004
(212) 425-7200
CUSTOMER NO. 26646